



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
P. O. Box 1720
Rancho Cordova, CA 95741-1720

KATHLEEN CONNELL
Chair

DEAN ANDAL
Member

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Member

April 28, 2000 Franchise Tax Board Litigation Roster

All cases currently active and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list is also provided of new cases that have been added to the roster for the month as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board has also begun posting the current Litigation Roster on its Internet site. The current monthly Litigation Roster can be found at: http://www.ftb.ca.gov/legal/Lit_roster.pdf

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX

CLOSED CASES –APRIL 2000

Case Name

Court Number

Brown, Mary G.

Los Angeles Superior Court No. YC029313

Graybehl, Lonnie V. & Diane L.

San Francisco Superior Court No. 999509

Jaffee, Raya aka Raya H. Talil

Los Angeles Superior Court No. BC218039

FRANCHISE AND INCOME TAX

NEW CASES – APRIL 2000

Case Name

Court Number

Perucci, Otto A. & Ruth V.

San Francisco Superior Court No. 311405

Weiss, Barry & Esther

Los Angeles Superior Court No. BC227862

Weiss, Morris & Bessie

Los Angeles Superior Court No. BC227870

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER
April 2000**

#1 ADELBERG, MARVIN AND HELEN v. Franchise Tax Board

Los Angeles Superior Court Docket No.BC 131679

Filed - 7/18/95

Taxpayer's Counsel

FTB's Counsel

Robert Joe Hull & James J. Carroll III

Anthony Sgherzi

Shepphard, Mullin, Richter & Hampton

Issue Whether plaintiffs were entitled to treat income received from the sale of a patent as capital gain income.

Years 1975 and 1976 Amount \$25,522.00

Status Defendant's Notice of Appeal Re: Litigation Costs and Attorneys' Fees filed October 29, 1999.

#2 ADELBERG, MARVIN AND HELEN v. Franchise Tax Board

Los Angeles Superior Court Docket No.BC 135445

Filed - 9/15/95

COA, 2nd, # B110705

COA, 2nd, # B132953

Taxpayer's Counsel

FTB's Counsel

Robert Joe Hull & James J. Carroll III

Anthony Sgherzi

Shepphard, Mullin, Richter & Hampton,

Issue Whether plaintiffs were entitled to treat income received from the sale of a patent as capital gain income.

Years 1983 through 1986 Amount \$403,282.79

Status Defendant's Notice of Appeal of the Judgment on the Merits and on Attorneys' Fees filed September 23, 1999. Notice of Appeal on the Issue of Entitlement to Statutory Attorneys' Fees filed October 4, 1999.

AIRLAND CORP. v. Franchise Tax Board

Los Angeles Superior Court Docket No.BC207244

Filed - 03/17/99

Taxpayer's Counsel

FTB's Counsel

Ralph W. Tarr, Esq

Dean W. Freeman

Andrews & Kurth, LLP

Issues

1. Whether deductions relating to bad debts were properly calculated for the year 1988.
2. Whether the suit for refund for the year 1988 has been timely filed.

3. Whether the proper amount of interest was paid with respect to a refund allowed for the year 1990.

<u>Years</u>	1988 and 1990	<u>Amount</u>	\$504,046.00
<u>Status</u>	Discovery proceeding. Order of the Superior Court issued on January 28, 2000, denying the Board's Motion for Judgment on the Pleadings. Motion for Judgment in the Pleadings Denied Without Prejudice filed February 2, 2000. Defendant's Notice of Order Continuing Status Conference and Trial filed February 3, 2000. Defendant's Declaration for Additional Discovery filed April 4, 2000.		

ALACANO, ENES & KATHLEEN v. Franchise Tax Board

San Francisco Superior Court Docket No. 306132

Filed – 09/03/99

Taxpayer's Counsel

FTB's Counsel

Jeffrey R. Kurtz, Howard G. Rath, Jr.
Lewis, D'Amato, Brisbois & Bisgaard, LLP.

Greg Mangani

Issue Whether the taxpayers' disposition of real property qualified as a "like-kind" exchange under California Revenue and Taxation Code Section 18031.

<u>Years</u>	1989	<u>Amount</u>	\$94,474.06
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Status Status Conference held February 4, 2000. Discovery.

ALPHA THERAPEUTIC CORPORATION v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC206569

Filed – 03/05/99

Taxpayer's Counsel

FTB's Counsel

Fredrick A. Richman
O'Melveny & Myers LLP

Thomas G. Heller

Issue Whether Section 33 of the Revenue and Taxation Code exempts plaintiff from the taxes imposed by the Bank and Corporation Tax Law.

<u>Years</u>	1990 through 1993	<u>Amount</u>	\$950,927.00
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Status Plaintiff/Appellant's Notice of Appeal filed December 20, 1999. **Plaintiff/Appellant's Opening Brief filed April 3, 2000.**

APCOA/STANDARD PARKING v. Franchise Tax Board

San Francisco Superior Court Docket No. 308209

Filed – 11/30/99

Taxpayer's Counsel

FTB's Counsel

Steve S. Mayne/Raymond A. Chenault

Greg Mangani

Issues

1. Whether the Notice of Proposed Assessment was timely mailed.
2. Whether gain on the deemed sale of assets was properly characterized as business income.

3. Whether the gain from the deemed sale of assets must be included in the sales factor of the apportionment formula.

<u>Year</u>	1989	<u>Amount</u>	\$395,331.00
<u>Status</u>	Summons and Complaint filed November 30, 1999. Answer to the Complaint filed December 30, 1999.		

BLANKENSHIP, ELIZABETH v. Franchise Tax Board

Sacramento Superior Court Docket No.98ASO6428

Taxpayer's Counsel

Elizabeth Blankenship, In Pro Per

Filed – 12/21/98

FTB's Counsel

Kristin M. Engstrom

<u>Issues</u>	1. Whether plaintiff qualified for head of household filing status.
	2. Whether plaintiff has stated a cause of action.
	3. Whether plaintiff has exhausted her administrative remedies.
	4. Whether plaintiff is legally able to obtain the relief requested.

<u>Years</u>	1993 through 1997	<u>Amount</u>	\$797.00
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<u>Status</u>	Plaintiff/Appellant's Notice of Appeal filed December 1, 1999. Plaintiff/Appellant's Brief filed March 21, 2000. Defendant/Respondent's Brief filed April 13, 2000.
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BONILLA, KENNETH B. & ILENE D. v. Franchise Tax Board

Los Angeles Superior Court Docket No.

Taxpayer's Counsel

Howard S. Borenstein

Filed – 11/08/99

FTB's Counsel

Thomas G. Heller

<u>Issue</u>	Whether distributions from a qualified pension plan are exempt from tax by operation of Internal Revenue Code section 105, which has been incorporated by reference into California law by RTC section 17131.
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<u>Year</u>	1988	<u>Amount</u>	\$175,899.00
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<u>Status</u>	FTB's Answer to Unverified Complaint filed January 6, 2000. Status Conference on April 25, 2000.
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BRITTAN HEIGHTS CONDOMINIUM ASSOCIATION, a California corporation v. Franchise Tax Board

San Francisco Superior Court Docket No.986529

COA, 1st, # AO82761

Taxpayer's Counsel

Feingold & Youngling, P.L.C.

Filed - 5/5/97

FTB's Counsel

Marguerite Stricklin

<u>Issue</u>	Whether interest received on settlement proceeds represented a non-taxable return of capital.		
<u>Year</u>	12/31/88	<u>Amount</u>	\$21,152.00
<u>Status</u>	Appellant's/Plaintiff Opening Brief filed July 22, 1998. Defendant/Respondent's Brief filed September 9, 1998.		

CERIDIAN CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No.983377

Filed - 12/19/96

COA 1st No.AO84298

Taxpayer's Counsel

FTB's Counsel

James P. Kleier

Julian Standen

Preston, Gates & Ellis

<u>Issues</u>	1. Whether dividends received from insurance subsidiaries are business income.
	2. If dividends from insurance subsidiaries are business income, whether the apportionment factors of the dividend paying subsidiaries must be included in computing plaintiff's apportionment factor.
	3. Whether section 24410 of the Revenue and Taxation Code discriminates against non-domiciliary receipts of dividends from insurance companies.

<u>Years</u>	12/31/78 through 12/31/81	<u>Amount</u>	\$556,442.00
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<u>Status</u>	Appellate Briefing completed December 27, 1999.
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CHEN, ROY, an individual, and VALUABLE PROPERTIES, INC., a California corporation v. Franchise Tax Board

Los Angeles Superior Court Docket No.BC 134258

Filed - 8/25/95

COA, 2nd, # B113296

CSC #S072002

Taxpayer's Counsel

FTB's Counsel

Riordan & McKinzie - Sandra J. Levin &

Herbert A. Levin

Eric J. Smith

<u>Issue</u>	Whether a deduction claimed by the corporation for compensation for construction management services was properly disallowed or, in the alternative, whether such compensation should have been capitalized and allocated to later years.
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<u>Year</u>	9/81	<u>Amount</u>	\$118,293.00
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<u>Status</u>	Court of Appeal affirmed judgment for plaintiff June 19, 1998. Petition for Review granted on August 28, 1998. Order by the Calif. Supreme Ct.: dismissing review, remanding the action to the Ct. of Appeal and directing partial publication of the opinion of the Court of Appeal filed on October 27, 1999; Remittitur by the Ct. of Appeal to the Superior Court filed November 1, 1999.
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CITICORP NORTH AMERICA, INC. and AFFILIATES v. Franchise Tax Board

San Francisco Superior Court Docket No.990474
COA, 1st A086925

Filed - 10/22/97

Taxpayer's Counsel

Eric J. Coffill & Lisa R. Brenner
Morrison & Foerster LLP

FTB's Counsel

David Lew

Issues

1. Whether a portion of the property and sales of a member of the unitary business of which plaintiff is a part was properly included in the California numerator of the property and sales factor of the apportionment formula.
2. Whether gains from the sale of various buildings were properly classified as business income.
3. Whether a proposed overpayment for the income year 1985 was properly applied to the income year 1994.

Years

12/31/85 through 12/31/88

Amount

\$12,347,622.00

Status

Appellate Briefing Completed March 30, 2000.

CUMMINGS, NICHOLAS & DOROTHY v. Franchise Tax Board

Los Angeles Superior Court Docket No. LC050930

Filed – 12/20/99

Taxpayer's Counsel

Mark D. Pastor, Esq. & Robert T. Leonard, Esq.
Pastor & Leonard

FTB's Counsel

Diane Spencer Shaw

Issue

1. Whether taxpayers were residents of California.
2. Whether penalties for failure to furnish information after notice and demand were properly assessed.

Years

1991, 1992, 1993

Amount

\$1,489,992.00 Tax
\$ 372,498.00 Penalty

Status

Summons and Complaint served on January 12, 2000. Answer to Complaint filed on February 14, 2000.

DELUXE CORPORATION, a Minnesota corporation v. Franchise Tax Board

San Francisco Superior Court Docket No.991237

Filed - 11/26/97

COA 1st Dist. Div. 2 No. A088142

Taxpayer's Counsel

Charles J. Moll III and Edwin P. Antolin
Morrison & Foerster LLP

FTB's Counsel

Joyce Hee

Issue

Whether including in the sales factor numerator sales made to California customers by unitary affiliates alleged to be protected by Public Law 86-272 violated the UDITPA, Public Law 86-272, or various provisions of the California and United States Constitutions.

<u>Years</u>	12/31/88 through 12/31/89	<u>Amount</u>	\$331,520.00
<u>Status</u>	Appellant's Opening Brief filed January 18, 2000. Defendant/Respondent's Brief filed March 29, 2000. Stipulation Extending Time for Filing Appellant's Reply Brief filed April 13, 2000.		

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board

Sacramento Superior Court Docket No.511821	Filed - 12/20/89
COA, 3 rd , # C020733	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Joanne Garvey, Joan Irion & Teresa Maloney	John D. Schell
Heller, Ehrman, White & McAuliffe	

Issue Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.

<u>Years</u>	1980 through 1985	<u>Amount</u>	\$1,137,006.98
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Status Appellate Briefing completed February 26, 1997.

F. W. WOOLWORTH CO. and KINNEY SHOE CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No.962405	
COA, 1 st , # AO75506	Filed - 7/18/94
U.S. Supreme Court #98-1967	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
McCutchen, Doyle, Brown & Enersen	Joyce Hee
John B. Lowry & James P. Kleinberg	

Issues

1. Whether Woolworth and Kinney were engaged in a unitary business during the years in issue.
2. Whether the interest offset provisions of Revenue & Taxation Code section 24344(b) are unconstitutional.

<u>Years</u>	1/31/78 through 1/31/83	<u>Amount</u>	\$3,985,797.00
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Status Petition for Writ of Certiorari is granted. The Judgment is vacated and the case is remanded to the Court of Appeal on February 28, 2000. **Plaintiff/Appellant's Motion for Order Directing Entry of Judgment; Memorandum of Points and Authorities in Support of Motion for Order Directing Entry of Judgment filed April 10, 2000. Defendant/Respondent's Opposition to Motion for Order Directing Entry of Judgment as Proposed, and Request for Entry of Alternative Judgment filed April 14, 2000. Plaintiffs/Appellants' Application for Leave to File Reply in Support of Motion for Order Directing Entry of Judgment; Reply Memorandum filed April 14, 2000.**

FIRST CREDIT BANK & SUBSIDIARY v. Franchise Tax Board	
Los Angeles Superior Court Docket No. BC205481	Filed – 02/17/99
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Steven R. Mather, Kajan Mather and Barish	Gregory Price and Thomas Heller

- Issues
1. Whether Section 24402(a) of the Revenue and Taxation Code is unconstitutional because it violates the Commerce Clause, the Equal Protection Clause of the 14th Amendment and the Due Process Clause of the United States Constitution.
 2. Whether accuracy related penalties were properly assessed for the years 1991 and 1992.

<u>Years</u>	1991 through 1994	<u>Amount</u>	\$176,154.00 Tax \$ 29,652.00 Penalty
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Status Summary Judgment hearing continued to August 1, 2000. Final Status Conference scheduled for August 25, 2000. Trial to commence September 25, 2000.

FREYERMUTH, JANINE v. Franchise Tax Board	
San Francisco Superior Court Docket No. 308985	Filed – 01/04/00
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Janine Freyermuth	Jack Newman

Issue Whether the taxpayer was a resident of California.

<u>Years</u>	1986 and 1987	<u>Amount</u>	\$47,471.00
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Status Summons and Complaint served January 14, 2000. Answer to the Complaint filed February 15, 2000.

FREYERMUTH, REED v. Franchise Tax Board	
San Francisco Superior Court Docket No. 308973	Filed – 01/04/00
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Joel K. Belway, Esq.	Jack Newman

Issue Whether the taxpayer was a resident of California.

<u>Years</u>	1986 and 1987	<u>Amount</u>	\$47,471.00
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Status Summons and Complaint served January 12, 2000. Answer to the Complaint filed February 15, 2000.

GILMOR, JOHN S. v. Franchise Tax Board	
Sacramento Superior Court Docket No. 99AS06528	Filed – 11/30/99
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Kevin S. Veenstra	Julian Standen

Issue 1. Whether the assessment of taxes, penalties and interest for the subject years were barred by the statute of limitation.
 2. Whether amounts in excess of those actually due have been collected.
 3. Whether plaintiff is entitled to recover attorney's fees.

<u>Years</u>	1977 through 1980	<u>Amount</u>	\$7,982.03 Tax \$2,160.62 Penalty
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Status Summons and Complaint served February 2, 2000. **Answer to Complaint filed April 26, 2000.**

GRIFFIN, ALAN E. v. Franchise Tax Board	
San Francisco Superior Court Docket No.998880	Filed - 10/29/98
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Alan E. Griffin, pro per	Julian Standen

Issue Whether the taxpayer elected installment basis reporting with respect to two pieces of property disposed of in 1986.

<u>Year</u>	1986	<u>Amount</u>	\$8,646.00 Tax \$2,161.00 Penalty
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Status Trial continued to June 19, 2000, at Plaintiff's request.

GUY F. ATKINSON COMPANY OF CALIFORNIA, a Delaware corporation v. Franchise Tax Board	
San Francisco Superior Court Docket No.987401	Filed - 6/12/97
COA 1 st #A085075	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Jeffrey M. Vesely & Richard E. Nielsen	David Lew
Pillsbury, Madison & Sutro LLP	

Issue Whether solar energy credits are allowed to a unitary business or are limited to a single entity.

<u>Years</u>	12/31/83, 12/31/84 and 12/31/87	<u>Amount</u>	\$1,330,662.00
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Status Appellate Briefing Completed January 3, 2000.

HOECHST CELANESE CORPORATION v. Franchise Tax Board	
Sacramento Superior Court Docket No.96AS01954 COA, 3 rd , # C030702 CSC No. S085091-S085095	Filed - 4/5/96
<u>Taxpayer's Counsel</u> Morrison & Foerster LLP - Eric Coffill	<u>FTB's Counsel</u> George Spanos

<u>Issue</u>	Whether gain resulting from the termination of an employee retirement plan was properly classified as business income.		
<u>Year</u>	12/31/85	<u>Amount</u>	\$292,142.00
<u>Status</u>	Court of Appeal issued Modified Opinion in Favor of Plaintiff on January 3, 2000, which was certified for publication. California Supreme Court Granted Defendant/Petitioner's Petition for Review on March 1, 2000. Request for Extension to file Defendant/Petitioner's Brief filed March 31, 2000. Second Request for Extension to File Defendant/Respondent's Brief filed April 18, 2000.		

HUFFY CORPORATION, an Ohio Corporation, et al. v. Franchise Tax Board	
Los Angeles Superior Court Docket No.BC220541 <u>Taxpayer's Counsel</u> Norman H. Lane	Filed – 11/22/99 <u>FTB's Counsel</u> Joseph M. O'Heron W. Dean Freeman

<u>Issue</u>	Whether sales made to California customers by appellant's consumer product divisions are properly included in the numerator of the sales factor.		
<u>Years</u>	1989 through 1994	<u>Amount</u>	\$457,041.00
<u>Status</u>	Summons and Complaint filed November 22, 1999. Answer to Complaint filed February 22, 2000.		

HUNT-WESSION, INC., f.k.a. Beatrice/Hunt-Wesson, a successor by merger with Beatrice Company, f.k.a. CagSub, Inc., a successor in interest to Beatrice Companies, Inc., f.k.a. Beatrice Foods Company v. Franchise Tax Board	
San Francisco Superior Court Docket No.976628 COA, 1 st , # AO79969 CSC #S076104 U.S. Supreme Court No.98-2043	Filed - 3/7/96
<u>Taxpayer's Counsel</u> Morrison & Foerster – Charles J. Moll, III & Edwin P. Antolin	<u>FTB's Counsel</u> David Lew

<u>Issue</u>	Whether application of the interest offset provision of Revenue and Taxation Code section 24344 violates the California and U.S. Constitutions.
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<u>Years</u>	2/28/81 and 2/28/82	<u>Amount</u>	\$1,523,462.00
<u>Status</u>	U.S. Supreme Court decision on February 22, 2000 in favor of Plaintiff/Petitioner.		

HYATT, GILBERT P. v. Franchise Tax Board

Clark County, Nevada # A382999

Taxpayer's Counsel

Hutchison & Steffen - Thomas L. Steffen
and Mark A. Hutchison

Filed - 1/6/98

FTB's Counsel

Felix Leatherwood

<u>Issues</u>	<ol style="list-style-type: none"> 1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992. 2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages. 3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.
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<u>Years</u>	1991 and 1992	<u>Amount</u>	\$13,204,611.00
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Status Trial rescheduled to November 7, 2000. FTB's Petition for Writ of Mandamus, or in the Alternative, for Writ of Prohibition filed January 25, 2000. FTB's Motion for Summary Judgment filed January 27, 2000. **FTB Request for Discovery Stay with the Nevada Supreme Court filed April 10, 2000. Defendant's Motion for Stay Pending Adjudication of Petition for Writ of Mandamus, or in the Alternative, for Writ of Prohibition filed April 11, 2000.**

J.H. MCKNIGHT RANCH, INC. v. FRANCHISE TAX BOARD

San Francisco Superior Court Docket No. 303484

Taxpayer's Counsel

Jon S. Siamas, Esq.

Filed - 05/13/99

FTB's Counsel

Jack Newman

<u>Issues</u>	<ol style="list-style-type: none"> 1. Whether the court has jurisdiction when the interest owing with respect to the underlying assessment has not been paid. 2. Whether the "tax benefit" rule operates to allow income realized from the cancellation of indebtedness to be disregarded. 3. Whether the "contested liability doctrine" allows deductions incurred in prior years to be reported in the year the indebtedness was discharged.
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<u>Years</u>	1990	<u>Amount</u>	\$97,258.00
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Status **First Amended Memorandum of Points & Authorities in Support of Demurrer to First Amended Complaint filed April 3, 2000.**

MARKEN, DONALD W. & CLAUDINE H v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520

Taxpayer's Counsel

William E. Taggart, Jr.

Filed - 04/05/99

FTB's Counsel

Marguerite Stricklin

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount \$244,012.00

Status Notice of Decision in favor of Plaintiff filed March 29, 2000. **Plaintiffs' Opposition to Defendant's Motion to Amend Its Answer to Conform to the Proof at Trial; Court Proposed Judgment in favor of Plaintiff filed April 10, 2000.**

MCHONE, TERESA A. v. Franchise Tax Board

Sacramento Superior Court Docket No. 99AS06887

Taxpayer's Counsel

Donald W. Ullrich, Jr.

Filed – 12/16/99

FTB's Counsel

John D. Schell

Issue 1. Whether plaintiff has filed a claim for refund with respect to the subject year.
2. Whether the plaintiff is entitled to "innocent spouse" relief and a refund of payments made for the year 1993.

Years 1993 Amount \$57,100.00

Status Defendant's Demurrer to the First Amended Complaint filed March 13, 2000. **Memorandum of Points and Authorities in Opposition to Defendant's Demurrer to First Amended Complaint for Refund filed April 9, 2000. Defendant's Reply to Opposition to Demurrer to First Amended Complaint filed April 11, 2000. Defendant's Objection to Declaration of Plaintiff in Support of Opposition to Defendant's Demurrer to First Amended Complaint filed April 13, 2000.**

MCMENAMIN, JAMES & KATHRYN v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC223616

Taxpayer's Counsel

Law Offices of Philip Garrett Panitz

Filed – 01/25/00

FTB's Counsel

Thomas Heller

Issue 1. Whether the plaintiffs were residents of California during the subject years.
2. Whether the consideration of certain facts in making a determination of residency was constitutional.
3. Whether the amount of net operating loss claimed on a 1989 nonresident return was properly calculated.
4. Whether dividend income from a particular investment fund was exempt from California taxation.
5. Whether a negligence penalty was properly imposed.
6. Whether a failure to furnish information penalty was properly imposed.

7. Whether interest should be abated on any deficiencies which may exist.
8. Whether plaintiffs are entitled to attorney's fees.

<u>Years</u>	1986 through 1989	<u>Amount</u>	\$99,663.00 Tax \$69,383.55 Penalty
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Status Summons and Complaint served January 26, 2000. Notice of Motion and Motion by Defendant to Strike Portions of Complaint filed March 13, 2000. **Plaintiff's Opposition to FTB's Motion to Strike Portions of the Complaint; Memorandum of Points and Authorities filed April 7, 2000. Hearing on Motion to Strike filed April 20, 2000.**

MISBACH, GREGORY v. Franchise Tax Board

San Francisco Superior Court Docket No. 306781

Filed – 09/28/99

Taxpayer's Counsel

FTB's Counsel

Kent A. Russell

Kris Whitten

Issue Whether plaintiff was properly assessed a 25% penalty for failing to file a return after notice and demand.

<u>Year</u>	1994	<u>Amount</u>	\$ -0- Tax \$18,964.00 Penalty
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Status Discovery proceeding. Status and Trial Setting Conference held February 9, 2000. Defendant's Response to Plaintiff's Second Demand for Production of Documents filed March 3, 2000. **Defendant's Demand for Production of Documents filed April 4, 2000.**

NORWEST FINANCIAL CALIFORNIA, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No.998286

Filed - 10/02/98

Taxpayer's Counsel

FTB's Counsel

Morrison & Foerster – Amy L.

David Lew

Liverstein and Prentiss Willson, Jr.

- Issue
1. Whether dividends received from a subsidiary engaged in the insurance business were business income.
 2. Whether including dividends paid by an insurance company in the measure of tax of a non-insurance company violates Article XIII, Section 28 of the California Constitution.
 3. Whether including dividends in apportionable income without including the factors of the dividend payer in the apportionment formula violates the Due Process Clauses of the U.S. and California Constitutions, the Commerce Clause of the United States Constitution and Revenue & Taxation Code section 25137.
 4. Whether Revenue & Taxation Code section 24410 discriminates against interstate commerce in violation of the United States Constitution by allowing a deduction for a portion of dividends received from an insurance company by a California domiciliary.
 5. Whether all dividends received by a non-insurance company from an insurance company must be excluded from the measure of California tax.

<u>Years</u>	1978 – 1984	<u>Amount</u>	\$1,181,902.00
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Status Defendant's General Denial filed November 5, 1998. Order Granting Motion To Stay Proceedings pending Appellate Decision in Ceridian Corp. granted May 26, 1999.

PEPSICO, INC. & AFFILIATES v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC217786

Taxpayer's Counsel

Jeffrey G. Varga

Filed – 10/01/99

FTB's Counsel

Herbert Levin &
Thomas Heller

Issue Whether the taxpayer should have computed their tax on the basis of a worldwide combined report including affiliates in foreign countries.

Year 1993 Amount \$2,619,398.00

Status Status Conference held on February 3, 2000.

PERUCCI, OTTO A. & RUTH V. v. Franchise Tax Board

San Francisco Superior Court Docket No. 311405

Taxpayer's Counsel

Harry Gordon Oliver

Filed – 04/11/00

FTB's Counsel

Jack Newman

Issue Whether gain realized on the 1986 sale of stock that was reported in 1995 was eligible for treatment as gain from the sale of small business stock.

Years 1995 Amount \$17,050.00

Status Summons & Complaint served April 12, 2000.

RADENBAUGH, RICHARD & PATRICIA v. Franchise Tax Board

Los Angeles Superior Court No. BC206543

Court of Appeal 2nd Appellate District No. B138030

Taxpayer's Counsel

Laski & Gordon-Kenneth G. Gordon

Filed – 03/05/99

FTB's Counsel

Marla K. Markman

Issue 1. Whether plaintiffs are entitled to a refund for 1981 based on the doctrine of equitable recoupment with respect to a payment made for the tax year 1983.
2. Assuming the doctrine of equitable recoupment applies, what amounts are subject to refund?

Years 1981 Amount \$44,175.00

Status Notice of Entry of Judgment in favor of FTB. Plaintiff's Notice of Appeal filed December 27, 1999. Plaintiff/Appellant's Opening Brief filed March 20, 2000. **Defendant/Respondent's Brief filed April 19, 2000.**

READER'S DIGEST ASSOCIATION, INC. v. Franchise Tax Board

Sacramento Superior Court Docket No.98AS03483

Filed - 7/13/98

Taxpayer's CounselFTB's Counsel

De Cuir & Somach - John A. Mendez, Esq.;

Brann & Isaacson -, Martin I. Eisenstein, Esq.

George S. Isaacson, Esq.

Steven J. Green

Issues

1. Whether plaintiff is protected from paying a tax measured by income to California by Public Law 86-272.
2. Whether the application of the State Board of Equalization's decision in the Appeal of Finnigan violates Public Law 86-272.
3. Whether the assessment of the taxes at issue violates the Due Process Clause of the United States Constitution.
4. Whether the assessment of taxes at issue discriminates against plaintiff in violation of the Commerce Clause of the United States Constitution.
5. Whether the assessment of taxes with respect to Plaintiff should be made pursuant to the State Board of Equalization decision in the Appeal of Finnigan or Appeal of Joyce.
6. Whether penalties were properly assessed under Section 19132(a)(1) of the Revenue and Taxation Code.

Years

06/30/86 through 06/30/88

Amount

\$806,497.00

Status

Trial held on February 1, 2000. Plaintiff's Post-Trial Brief filed March 6, 2000. **Plaintiff's Post-Trial Reply Brief filed April 10, 2000.**

S & P COMPANY & KELLER Street Development v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC222184

Filed - 12/23/99

Taxpayer's CounselFTB's Counsel

William A. White

Marla Markman

Issue

Whether pending federal matters extended the statute of limitations for filing state claims for refund.

Years

1987 through 1990

Amount

\$872,991.00

Status

Summons and Complaint served December 23, 1999. Answer to the Complaint filed February 17, 2000. **Notice of Status Conference by the Clerk Court filed April 6, 2000.**

Defendant's Demand for Production and Inspection of Documents filed April 25, 2000.

SALMAS, DAN P. v. Franchise Tax Board

San Diego Superior Court Docket No.730434

Filed - 05/03/99

Taxpayer's CounselFTB's Counsel

Dan P. Salmas (Pro Per)

Gregory S. Price

Issue

Whether the department's alleged failure to advise plaintiff of the time period for filing a claim for refund tolls the statute of limitations.

<u>Year</u>	1990	<u>Amount</u>	\$3,014.91
<u>Status</u>	Notice of Entry of Judgment in favor of FTB filed February 28, 2000. Order and Judgment in favor of FTB filed March 28, 2000.		

TAHOE BEACH AND SKI CLUB HOMEOWNERS ASSOCIATION v. Franchise Tax Board	
Los Angeles Superior Court No.BC 179491 COA 2 nd #B125786	Filed - 10/14/97
<u>Taxpayer's Counsel</u> Richard E. Hodge, LLP, Jefferson W. Gross	<u>FTB's Counsel</u> Thomas G. Heller

Issue Whether plaintiff should be classified as an exempt organization pursuant to Revenue and Taxation Code section 23701t.

<u>Years</u>	12/31/90 and 12/31/91	<u>Amount</u>	\$23,088.00 Tax \$11,144.99 Penalty
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Status Proposed Statement of Decision in favor of FTB dated March 29, 2000.

TOYS R US v. Franchise Tax Board	
Sacramento Superior Court Docket No. 99AS03572	Filed – 6/28/99
<u>Taxpayer's Counsel</u> Eric J. Coffill	<u>FTB's Counsel</u> Steve Green

Issue Whether plaintiff's late payment of estimated tax was due to reasonable cause and not due to willful neglect.

<u>Year</u>	1996	<u>Amount</u>	\$76,347.30 Penalty
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Status Discovery Proceeding. Notice of Arbitration/Designation Conference. Defendant's Response to Plaintiff's First Set of Specially Prepared Interrogatories filed February 8, 2000.

VALENTINO, GENE & MAUREEN v. Franchise Tax Board	
San Diego Superior Court Docket No. 739989	Filed – 12/08/99
<u>Taxpayer's Counsel</u> Kyle A. Cruse	<u>FTB's Counsel</u> Leslie Branman-Smith

Issue Whether plaintiffs are taxable in California on income earned by an S Corporation.

<u>Years</u>	1993 through 1995	<u>Amount</u>	\$48,719.14
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Status Summons and Complaint served December 14, 1999. Answer to the complaint filed January 13, 2000. Notice of Motion for Summary Judgment filed March 13, 2000. Plaintiffs' Response to Defendant's Request for Production of Documents (Set One) filed March 17, 2000.

VERTULLO, JOHN A. & BARBARA v. Franchise Tax Board

San Diego Superior Court Docket No. 739050

Filed – 11/19/99

Taxpayer's Counsel

FTB's Counsel

Denis Rotoske

Gregory Price

Issues 1. In what year was a capital loss realized and reportable?
2. Whether a substantial underpayment penalty was properly imposed.
3. Whether taxpayers improperly reported interest income in 1986.

<u>Years</u>	1986	<u>Amount</u>	\$25,397.00 Tax \$ 2,539.70 Penalty
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Status Summons & Complaint filed November 19, 1999. Answer to the complaint filed January 28, 2000.

WALKER, JR., Brooks & Danielle; BOWES, John & Francis; CARVER, John & Susan; DeBAUBIGNY, Andre & Elizabeth; FEIGENBAUM, B. J. & Julius, Trust, Ann Rossi, Trustee FRERIKS; Shirley; LUDWIG, James & Eileen and MIROV, Kenneth C. (deceased) & Joan R. v. Franchise Tax Board

San Francisco Superior Court Docket No.990571

Filed - 10/27/97

Court of Appeal 1st Dist. Div. 1 A087273

Taxpayer's Counsel

FTB's Counsel

Greene, Radovsky, Maloney & Share LLP

Julian Standen

Richard L. Greene & Edward I. Kaplan

Issue Whether stock received as the result of the conversion of debentures qualified for “small business stock” treatment.

<u>Year</u>	1983 through 1986	<u>Amount</u>	\$786,981.00
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Status Appellate Briefing Completed November 15, 1999.

WEINGARTEN, SAUL M. v. Franchise Tax Board

San Francisco Superior Court Docket No.996766

Filed - 7/28/98

Taxpayer's Counsel

FTB's Counsel

Saul M. Weingarten

Marguerite Stricklin

Saul M. Weingarten & Associates

Issues 1. Whether the Board of Equalization followed proper procedures in considering the taxpayer's appeal.

2. Whether taxpayer's real estate investments were subject to passive activity loss limitations.
3. Whether FTB properly calculated depreciation with respect to various properties.
4. Whether FTB properly calculated the sales price of a piece of property sold by the taxpayer.
5. Whether penalties were improperly imposed.

<u>Years</u>	1987 through 1989	<u>Amount</u>	\$88,966.00 Tax \$22,241.75 Penalty
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Status Discovery proceeding.

WEISS, BARRY & ESTHER v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC227862
Taxpayer's Counsel
Steven R. Mather

Filed – 04/06/00
FTB's Counsel
Raymond B. Jue

Issue **Whether the taxpayers had sufficient basis in the stock of an S Corporation to allow them to deduct the losses reported by the corporation on their return.**

<u>Years</u>	1987 through 1989	<u>Amount</u>	\$80,616.00
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Status **Summons & Complaint served April 21, 2000.**

WEISS, BARRY AND ESTHER v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC214913
Taxpayer's Counsel
Steven R. Mather
Kajan Mather and Barish

Filed – 08/09/99
FTB's Counsel
Raymond B. Jue

Issue Whether the taxpayers had sufficient basis in the stock of an S Corporation to allow them to deduct the losses reported by the corporation on their return.

<u>Year</u>	1990	<u>Amount</u>	\$49,513.00
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Status Summons and Complaint filed 08/09/99. Defendant's Answer to the Complaint filed September 23, 1999. **Notice of Status Conference by Court Clerk filed April 4, 2000. Notice of Related Cases filed April 13, 2000. Defendant's First Set of Special Interrogatories to Plaintiff filed April 25, 2000.**

WEISS, MORRIS & BESSIE v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC227870
Taxpayer's Counsel
Steven R. Mather

Filed – 04/06/00
FTB's Counsel
Raymond B. Jue

Issue Whether the taxpayers had sufficient basis in the stock of an S Corporation to allow them to deduct the losses reported by the corporation on their return.

Years 1987 through 1989 **Amount** \$518,622.00

Status Summons & Complaint served April 21, 2000.

WEISS, MORRIS & BESSIE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC214916

Taxpayer's Counsel

Steven R. Mather

Kajan Mather and Barish

Filed – 08/09/99

FTB's Counsel

Raymond B. Jue

Issue Whether the taxpayers had sufficient basis in the stock of an S Corporation to allow them to deduct the losses reported by the corporation on their return.

Year 1990 **Amount** \$263,926.00

Status Summons and Complaint filed 08/09/99. Defendant's Answer to the Complaint filed September 23, 1999. **Notice of Status Conference by Court Clerk filed April 4, 2000. Notice of Related Cases filed April 13, 2000. Defendant's First Set of Special Interrogatories to Plaintiff filed April 25, 2000.**

WILLAMETTE INDUSTRIES, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 303094

Taxpayer's Counsel

Lawrence V. Brookes

Filed - 04/27/99

FTB's Counsel

Julian Standen

Issue Whether FTB violated the standards of Pope Estate v. Johnson by additionally assessing the taxpayer for 1977.

Year 1977 **Amount** \$5,172.00

Status Judgment in favor of Defendant FTB dated March 27, 2000.

WYNN'S INTERNATIONAL, INC. a Delaware Corporation v. Franchise Tax Board

San Francisco Superior Court Docket No. 308143

Taxpayer's Counsel

Charles J. Moll III

Filed – 11/24/99

FTB's Counsel

Joyce Hee

Issues

1. Whether under UDITPA sales should be assigned to the numerator of the sales factor on the basis of the activities of the unitary business.
2. Whether assigning sales to the numerator of the sales factor on the basis of the activities of the unitary business violates Public Law 86-272 (15 USC § 381).

3. Whether application of FTB Notice 90-3 to the taxpayer violates the Administrative Procedures Act.

<u>Years</u>	1983 and 1984	<u>Amount</u>	\$51,109.00
<u>Status</u>	Summons and Complaint served December 16, 1999. Answer to Complaint filed on January 27, 2000. Notice of Time and Place of Trial dated April 19, 2000. Plaintiff's Joint Objection to Trial Date and Request to Stay Trial Proceedings.		

YEDLIN, RUTH and SIDNEY (deceased); STERN, Joseph M. and Dorothy L. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 177709	Filed - 09/10/97
COA 2 nd #B125783	
California Supreme Court No. BC177709	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Tyre, Kamins, Katz & Granof	Raymond Jue
William Holcomb & H. Jay Ford III	

<u>Issues</u>	<ol style="list-style-type: none"> 1. Whether stock sold by the plaintiffs qualified as "small business stock." 2. Whether plaintiffs were entitled to exclude gain on the sale of "small business stock" from the computation of preference tax.
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<u>Years</u>	1984 through 1985	<u>Amount</u>	\$12,361.00
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<u>Status</u>	Non-published Opinion of the Court of Appeal filed on January 11, 2000, affirming the trial court's judgment against the Board. Plaintiff/Respondents' Petition for Review Denied on April 12, 2000.
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